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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Memorandum of Ex Parte Communication

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325-Lobby
Washington, D.C. 20554

Dear Ms. Salas:

Re: CC Docket No. 98-147/Deployment of Wireline Services Offering Advanced Telecommunications Capability and CC Docket No. 96-98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

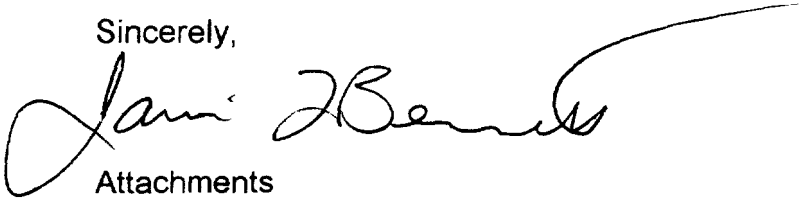
On Tuesday, July 3, 2001, Priscilla Hill-Ardoin – Sr. Vice President – Federal Regulatory, Colin Stretch - Attorney and the undersigned met with Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy, regarding the above-listed proceedings. The purpose of the meeting was to discuss the remand issues arising from the District of Columbia Circuit Court of Appeals Opinion on the FCC's March 1999 Collocation Order. Specific issues discussed were cross-connects between collocated CLECs, collocation of multifunctional equipment, and selection of collocation space.

The attached material was distributed and discussed during the meeting. We are submitting the original and one copy of this Memorandum to the Secretary in accordance with Section 1.1206 of the Commission's rules.

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Please include a copy of this submission in the record of the above-listed proceedings. Also, please stamp and return the provided copy to confirm your receipt. You may contact me at (202) 326-8889 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jami Z. Bernick". The signature is fluid and cursive, with a long, sweeping horizontal line extending from the end of the name.

Attachments

cc: B. Tramont (w/o attachments)

SBC Communications Inc.
Ex Parte Re: Collocation Remand Issues
CC Docket Nos. 98-147, 98-96

The DC Circuit Court ruling was clear and correct: The FCC may not require ILECs to offer CLEC-to-CLEC cross-connects, the collocation of equipment not necessary for interconnection or access to UNEs, or CLEC selection of collocation space.

CLEC-to-CLEC Cross-Connects

The DC Circuit Court ruled that requiring ILECs to provide cross-connects is inconsistent with Section 251(c) (6), which is "focused solely on connecting new competitors to LECs' networks."

- Cross-Connects are not necessary for interconnection or access to UNEs.
- CLECs have the option of provisioning the cross-connects in locations other than the ILEC central office.
- SBC has a market offering that allows cross-connects between collocation arrangements.
 - The cross-connects may be either CLEC self-provisioned or SBC provisioned at access rates.

Multifunctional Equipment

On the issue of multifunctional equipment, the DC Circuit Court ruled that ILECs are only required to allow the collocation of equipment directly necessary for the establishment of interconnection or access to UNEs.

The Court's ruling found that:

- Equipment must be "necessary, required or indispensable" for interconnection or access to UNEs.
- Requiring collocation of equipment not necessary for interconnection or access to UNEs is an improper taking.
- "[D]elay at higher cost for new entrants... cannot be used by the FCC to overcome statutory terms."

Applying these principles, collocation of multifunctional equipment would be permitted under the following conditions:

<u>The equipment must:</u>	<u>The equipment must not:</u>	
Contain functions necessary for interconnection or access to UNEs, including such functions required to provide a telecommunications service through the incumbent's network, but which cannot be performed elsewhere.	Contain stand-alone switching functionalities	
Utilize power and electronics	Contain enhanced services functionalities	
Provide aggregation of traffic and or transport capabilities	Must not duplicate infrastructure functions performed by ILEC (e.g. BDFB's, power plants, batteries, HVAC)	

Selection of Collocation Space

It is the responsibility of the ILEC as the property owner to protect and manage its central office. If the ILEC retains the responsibility of selecting collocation space the following benefits would be realized:

- Efficient utilization and management of central office space.
- Consistent protection and management of the network.



SBC Collocation Ex-Parte

April 11, 2001





CLEC to CLEC Connections

- ✓ "One clear example of a problem that is raised by the breadth of the Collocation Order's interpretation of 'necessary' is seen in the Commission's rule requiring LECs to allow collocating competitors to interconnect their equipment with other collocating carriers. . . . The obvious problem with this rule is that the cross-connects requirement imposes an obligation on LECs that has no apparent basis in the statute. . . The statute requires LECs to provide physical collocation of equipment as 'necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier,' ***and nothing more.***"





CLEC to CLEC Connections

- ✓ Not necessary for interconnection to the ILEC or access to the ILEC's UNEs.
- ✓ SBC offers voluntarily in two ways.
 - ✓ CLECs are responsible for the direct connections.
 - ✓ SBC will perform the CLEC to CLEC connection at access rates.
- ✓ CLECs can achieve the same result via a shared arrangement or at the CLECs own premises or location of their choosing.





Equipment

- ✓ “There are other examples, as well, to demonstrate that the FCC’s interpretation of ‘necessary’ under § 251(c)(6) is impermissibly broad. . . . [T]he literal terms of the Collocation Order seem to embrace any and all equipment that is otherwise necessary without regard to whether such equipment unnecessarily *‘includes a switching functionality, provides enhanced service capabilities, or offers other functionalities.’*” (emphasis in original)





Equipment

- ✓ Court states that the meaning is clear that equipment must be "...necessary, required or indispensable" for interconnection or access to UNEs of the ILEC.
- ✓ Any requirement on the ILEC to allow that which is not "necessary" is an improper taking of property.
- ✓ Advanced Services Equipment - As described in the SBC/ Ameritech Merger Conditions.
- ✓ Other Multifunctional Equip. - Cannot be required, regardless of efficiency or cost arguments. ILEC may mutually agree to other equipment. SBC voluntarily allows collocation of an RSM (with limitations).
- ✓ Ancillary Equipment - Cannot be required. SBC may allow if only to support and be used with equipment that the CLEC has legitimately collocated in the same premises and as mutually agreed. No common systems equipment such as HVAC, power plants, battery distribution fuse bays (BDFB), independent frames, etc.
- ✓ No stand-alone switches or enhanced services equipment.





Placement of Collocation

- ✓ “It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LEC’s premises, subject only to technical feasibility. *There is nothing in § 251(c)(6) that endorses this approach.*”





Placement of Collocation

- ✓ Only the ILEC, as property 'owner' has the right to determine location placement.
- ✓ ILEC's right to protect its equipment and network. Security violations are real.
- ✓ ILEC's right to effectively and efficiently manage the space at its premises.
- ✓ Technically infeasible for CLECs to efficiently plan their placement. Only the ILEC would have all the information (CLECs and ILEC) required to layout an office.





Separate Entrances

- ✓ “The FCC offers no good reason to explain why a competitor, as opposed to the LEC, should choose where to establish collocation on the LEC’s property; nor is there any good explanation of why LECs are forbidden from requiring competitors to use separate entrances to access their own equipment; nor is there any reasonable justification for the justification for the rule prohibiting LECs from requiring competitors to use separate or isolated rooms or floors.”





Separate Entrances

- ✓ The DC Circuit vacated the prohibition on requiring separate entrances for CLECs because the requirement is not reasonable or just to the ILEC.
- ✓ SBC does not build new, separate entrances. SBC does modify existing entrances for CLEC use to ensure security of the ILEC's network reliability and property.
- ✓ SBC Telcos require its own non-authorized employees to use separate entrances and secured pathways unless escorted by an authorized employee.

